

JUL 23 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERMIN REYES PEREZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70490

Agency Nos. A96-364-554
A96-364-555
A96-364-556

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 14, 2008**

Before: SCHROEDER, LEAVY and IKUTA, Circuit Judges.

This is a petition for review from the Board of Immigration Appeals’
 (“BIA”) denial of a motion to reopen.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Respondent's motion for summary disposition is granted with respect to the motion to reopen to apply for protection under the Convention Against Torture because the questions raised by this petition for review as to that claim are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The BIA did not abuse its discretion in denying petitioners' motion to reopen, finding that the request for reopening was not supported by evidence showing eligibility for relief under the Convention Against Torture. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003); *Ordonez v. INS*, 345 F.3d 777, 784 (9th Cir. 2003). Accordingly, this petition for review is denied in part.

Respondent's motion to dismiss this petition for review for lack of jurisdiction with respect to the motion to reopen based on new evidence of hardship is granted. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006) (concluding that the court lacks jurisdiction to review the Board of Immigration Appeals' denial of motion to reopen for failure to establish a prima facie case if a prior adverse discretionary decision was made by the agency).

The temporary stay of removal shall continue in effect until issuance of the mandate. The motion for stay of voluntary departure, filed after the departure

period had expired, is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.